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PROPOSED DECISION

**Agenda ID #22986
Ratesetting**

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric
Company for Comprehensive Gas
Advanced Metering Infrastructure
Replacement Program. (U39M.)

Application 24-03-011

**DECISION AUTHORIZING ESTABLISHMENT OF A MEMORANDUM
ACCOUNT EFFECTIVE MARCH 14, 2024**

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**DECISION AUTHORIZING ESTABLISHMENT OF A
MEMORANDUM ACCOUNT EFFECTIVE MARCH 14, 2024**

Summary

This decision grants the Motion filed by Pacific Gas and Electric Company to establish the Comprehensive Gas Advanced Metering Infrastructure Replacement Program Memorandum Account, effective March 14, 2024. Authorization of the memorandum account, as requested, is unopposed and otherwise supported by the Public Advocates Office at the California Public Utilities Commission and The Utility Reform Network.

This decision also establishes that any adopted revenue requirements to be determined in this proceeding shall include interest, based on a Federal Reserve three-month commercial paper rate.

This decision does not authorize Pacific Gas and Electric Company to recover costs recorded in the Comprehensive Gas Advanced Metering Infrastructure Replacement Program Memorandum Account. Whether, how, and to what extent Pacific Gas and Electric Company may recover the costs tracked in that memorandum account will be determined after Application 24-03-011 has been fully reviewed and determined in this proceeding.

This proceeding will remain open.

1. Factual Background**1.1. PG&E's Gas Advanced Metering Infrastructure System**

Pacific Gas and Electric Company's (PG&E's) existing Gas Advanced Metering Infrastructure system (Gas AMI 1.0) is a one-way communication system that transmits customer gas energy usage to PG&E's billing system. The Gas AMI 1.0 system comprises application software, network communication

equipment, and battery-operated gas modules (Gas Modules) with network interface cards externally attached to customer gas meters.

PG&E installed Gas Modules throughout its service territory from 2006 to 2013. During that time, PG&E filed fourteen semi-annual reports pursuant to California Public Utilities Commission (Commission) Decision (D.) 06-07-027 to update the Commission and other parties to Application (A.) 05-06-028 about advances in metering technology and infrastructure, as well as Gas Module reliability, failure rates, costs, and performance.

On December 13, 2018, PG&E filed A.18-12-009, for a Test Year (TY) 2020 general rate case (GRC), to request authority to increase its GRC revenue requirement (*i.e.*, the total amount of money PG&E would be allowed to collect from customers to cover its costs, based on the company's costs over a 12-month period) beginning January 1, 2020. In that 2020 GRC filing, PG&E informed the Commission about a risk of Gas Module failures prior to their 20-year life expectancy. PG&E explained that the Gas Modules showed shorter-than-expected battery life and compromises in the plastic casing that exposed internal electronics to weather elements. PG&E committed to update the Commission on the status of Gas Module replacement in its 2023 GRC.

1.2. PG&E's 2023 GRC and Gas Module Maintenance and Replacement Programs

On June 30, 2021, PG&E filed A.21-06-021, initiating its TY 2023 GRC for years 2023-2026. PG&E requested approval of funding to: (1) continue to replace Gas Modules as they fail (referred to in the TY 2023 GRC as "Corrective Maintenance"); and (2) shift to replacing Gas Modules in a programmatic manner *prior* to failure, beginning in 2023, (referred to in the TY 2023 GRC as

“Lifecycle Replacement” or “Proactive Replacement”).¹ PG&E forecasted approximately \$36.5 million in expenses in 2023-2026, and approximately \$743.9 million in capital expenditures in 2023-2026 to replace Gas Modules under the Corrective Maintenance (\$263.4 million) and Lifecycle Replacement (\$480.5 million) programs.

Consistent with our practice in the TY 2020 GRC, on June 24, 2022, the Commission issued D.22-06-033, granting PG&E’s unopposed motion to make its TY 2023 GRC revenue requirement effective as of January 1, 2023 in the event the Commission adopted a final decision after year 2023 began.² In that decision, we authorized PG&E to continue to use the three memorandum accounts authorized for its TY 2020 GRC to track and subsequently recover any overcollection or under-collection of its final 2023 authorized revenue requirement plus interest.³ In addition, we granted as reasonable PG&E’s request that the adopted 2023 GRC revenue requirement include a provision for accrued interest, based on a Federal Reserve three-month commercial paper rate, “to keep PG&E and its

¹ See A.21-06-021.

² On February 7, 2019, PG&E filed a motion to request that the Commission issue a decision authorizing PG&E’s TY 2020 GRC revenue requirement, that was then pending determination in that proceeding, be effective January 1, 2020, in the event that the final decision was issued after January 1, 2020. In D.19-11-004, issued November 14, 2019, the Commission: (1) granted PG&E’s motion to make the TY 2020 GRC revenue requirement effective January 1, 2020, in the event that the final GRC decision was issued after January 1, 2020; and (2) directed PG&E to establish a GRC memorandum account to record the difference in revenue requirement (that was effective on January 1, 2020) and the final revenue requirement adopted in the final GRC decision. Decision 19-11-004 allowed PG&E and its ratepayers to be financially indifferent to the timing of the issuance of the final GRC decision.

³ Those memorandum accounts were as follows: (1) the General Rate Case Memorandum Account - Gas (GRCMA-G); (2) the General Rate Case Memorandum Account - Electric (GRCMA-E); and (3) the Gas Transmission and Storage Memorandum Account (GTSMA). See D.22-06-033 at 3-4 (citing D.19-11-004 at 7-8, Ordering Paragraphs 1 and 2; D.19-09-025 at 292-293). We required PG&E to file a Tier 1 Advice Letter to update its Preliminary Statement to reflect our authorization to use those three memorandum accounts. D.22-06-033 at 4.

ratepayers relatively indifferent to the timing of the Commission's final decision" in the 2023 GRC proceeding.⁴

On November 17, 2023, the Commission issued D.23-11-069 on PG&E's TY 2023 GRC application. In that decision, we adopted a forecast of \$0 for replacing Gas Modules because PG&E (1) did not adequately substantiate its request and (2) failed to propose a reasonable allocation of replacement costs between ratepayers and shareholders that accounted for the utility's errors in its Gas AMI module business plan.⁵

The Commission allowed PG&E to file a separate application seeking recovery for the Comprehensive Gas AMI Replacement Program in the future. At that time, we expressly stated that a memorandum account to recover costs for replacement of Gas Modules was *not* authorized by that decision.⁶

2. Procedural Background

On March 14, 2024, PG&E filed A.24-03-011 (Application) seeking to recover year 2023-2026 revenue requirements for its Comprehensive Gas Advanced Metering Infrastructure (GAMI) Replacement Program. PG&E requests that the Commission: (1) approve PG&E's 2023-2026 expense and capital forecasts for its GAMI Replacement Program; (2) adopt and authorize PG&E to reflect in rates its proposed 2023-2026 revenue requirement for PG&E's GAMI

⁴ D.22-06-033 at 4.

⁵ D.23-11-069 at 539-545.

⁶ D.23-11-069 at 539-545. The Commission stated that "*PG&E may file a separate application seeking recovery of cost for replacement of AMI modules, but no revenue requirement is authorized in this proceeding due to [1] the unsubstantiated nature of the forecast and [2] PG&E's failure to propose a reasonable allocation of costs for replacement between ratepayers and shareholders that fairly reflects PG&E's errors in its AMI module business plan. No memorandum account is authorized here.*" D.23-11-069 at 545 (emphasis added).

Replacement Program; and (3) adopt PG&E's cost recovery proposal to recover the costs of its GAMI Replacement Program.

The Public Advocates Office at the California Public Utilities Commission (Cal Advocates) and The Utility Reform Network (TURN) filed timely protests to the Application. Small Business Utility Advocates (SBUA) timely filed a response. Southern California Edison Company (SCE) sought and was granted party status.

On April 5, 2024, PG&E filed a Motion to Establish Memorandum Accounts (Motion). Cal Advocates and TURN filed oppositions to the Motion on April 22, 2024. PG&E filed a Reply to Protests and Responses (Reply) on April 29, 2024, addressing oppositions to the Motion.

On June 25, 2024, the parties filed a Joint Prehearing Conference Statement. A prehearing conference (PHC) was held on July 2, 2024, to address issues of law and fact, determine the need for hearing, set the schedule for resolving the proceeding, and address other matters as necessary. At the PHC, PG&E, Cal Advocates, and TURN (the Requesting Parties) jointly presented an agreement resolving TURN and Cal Advocates' opposition to the Motion. Neither SBUA nor SCE opposed the Motion or the Requesting Parties' agreement.

After considering the Application, protests and responses, PG&E's Motion, oppositions, responses, and the agreement resolving oppositions to that Motion, the Joint Prehearing Conference Statement, and discussion at the PHC, on October 10, 2024, assigned Commissioner Matthew Baker issued his Scoping Memo and Ruling.

3. Jurisdiction

The Commission has jurisdiction over the activities of public utilities.⁷ PG&E has operated as a public utility providing electric and gas services in California since 1905. PG&E is therefore a public utility subject to the Commission's jurisdiction.

4. Discussion

4.1. The Motion and Requesting Parties' Agreement

PG&E's Motion asked the Commission to authorize either (1) continued use of gas memorandum accounts authorized in PG&E's previous TY 2023 GRC; or (2) establishment of a new Comprehensive Gas Advanced Metering Infrastructure Memorandum Account (GAMIMA) to track and record PG&E's actual revenue requirements for costs, effective retroactively to January 1, 2023, through the effective date of the Commission's decision in this proceeding.⁸ The Motion also requests that the Commission issue an order that the adopted revenue requirement include interest, based on a Federal Reserve three-month commercial paper rate.

Underlying PG&E's Motion is an objective to offset the financial consequences of any delay in the date the Commission adopts a final decision in this proceeding. The Requesting Parties propose that PG&E should be authorized to record in the GAMIMA its various costs for the GAMI Replacement Program during the period between the GAMIMA effective date and the date of a final Commission decision in this proceeding. Upon a final

⁷ Pub. Util. Code Section 216(a).

⁸ PG&E offers that "the Commission has a longstanding practice of establishing memorandum accounts to allow utilities the opportunity to recover costs" and that "[a] memorandum account keeps PG&E's customers and shareholders financially indifferent to the timing of a Commission decision on this Application." Motion at 5 and n. 9 (citations omitted).

decision in this proceeding, PG&E would compare the authorized revenue requirement, if any, to the costs recorded in the GAMIMA.

In its Motion, PG&E requested a January 1, 2023 effective date or, in the alternative, a March 14, 2024 effective date.⁹ Both Cal Advocates and TURN initially opposed the Motion on the basis that a January 1, 2023 effective date would constitute prohibited “retroactive ratemaking.” However, in their June 25, 2024 Joint Prehearing Conference Statement and at the July 2, 2024 PHC, the Requesting Parties reported that they had reached an agreement regarding the Motion whereby Cal Advocates and TURN conditionally withdrew their oppositions, provided the Commission establish an effective date for the GAMIMA based on the filing date of the Application: March 14, 2024. Consequently, PG&E’s Motion is unopposed on the condition that the Commission set a March 14, 2024 effective date for the GAMIMA.

As part of their agreement, the Requesting Parties proposed an extended proceeding schedule to the Commission, citing D.19-01-019 as the basis for their agreement and request.¹⁰ They argued a need for significant preparation time to participate meaningfully in this proceeding and cited resource constraints, a need to engage in discovery, time to review and analyze significant volumes of evidence to prepare their respective cases, and their desire to engage in

⁹ PG&E is not seeking through its Motion our approval of rate recovery of any undercollection that might be recorded in the GAMIMA.

¹⁰ See D.19-01-019 at 5 (“At the Prehearing Conference . . . PG&E, Public Advocates and TURN announced that they had reached an agreement on two issues on which they had differing views with respect to the next steps in this proceeding, specifically approval of PG&E’s motion seeking a September 10, 2018, effective date for the [Memorandum Account], and the overall schedule of the proceeding. Public Advocates and TURN both agreed to withdraw their objections to implementation of PG&E’s [Memorandum Account] and PG&E in turn agreed to support the schedule for the proceeding put forth by Public Advocates and TURN.”).

settlement discussions to address and resolve disputed issues, among other justifications. All other parties joined the request for that proposed proceeding schedule at the PHC. That proceeding schedule was adopted by the assigned Commissioner in the Scoping Memo and Ruling.

We now consider the Motion in light of the Requesting Parties unopposed proposal that the Commission authorize PG&E to establish a GAMI Memorandum Account with a March 14, 2024 effective date.¹¹

4.2. Rule 12(d) Considerations

Although the parties do not present a formal proposed settlement agreement, we are informed by and have considered the factors used to review settlements under Rule 12(d) of the Commission's Rules of Practice and Procedure (Rules).

California law recognizes "a strong public policy favoring the voluntary settlement of disputes."¹² An adjudicating tribunal reviews a settlement agreement with certain criteria before providing its approval.¹³ Rule 12.1 promotes this statewide settlement policy by establishing the standard by which

¹¹ Joint Prehearing Conference Statement at 8.

¹² *Rheinhart v. Nissan N. Am., Inc.*, 92 Cal.App.5th 1016, 1027 (Cal. Ct. App. 2023) (stating "California has a strong public policy favoring the voluntary settlement of disputes" and citing *Monster Energy Co. v. Schechter*, 7 Cal.5th 781, 793 (Cal. 2019), 249 Cal.Rptr.3d 295, 444 P.3d 97; *Zamora v. Clayborn Contracting Group, Inc.*, 28 Cal.4th 249, 260 (Cal. 2002), 121 Cal.Rptr.2d 187, 47 P.3d 1056 ("the law favors settlements"); *Kaufman v. Goldman*, 195 Cal.App.4th 734, 745 (Cal. Ct. App. 2011), 124 Cal.Rptr.3d 555 (*Kaufman*); *Osumi v. Sutton*, 151 Cal.App.4th 1355, 1359 (Cal. Ct. App. 2011), 60 Cal.Rptr.3d 693 ("[i]t is, of course, the strong public policy of this state to encourage the voluntary settlement of litigation")). Settlement agreements "are highly favored as productive of peace and good will in the community, and reducing the expense and persistency of litigation." *McClure v. McClure*, 100 Cal. 339, 343 (Cal. 1893).

¹³ See, e.g., *Rheinhart v. Nissan N. Am., Inc.*, 92 Cal.App.5th at 1027 ("Notwithstanding that policy, courts can declare settlement agreements and releases, which the law treats like any other contracts (*Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127, 131 Cal.Rptr.2d 387), void and unenforceable on the basis of other public policies, illegality or unfairness.").

the Commission reviews and approves voluntary settlements in its proceedings. A proposed Settlement Agreement may be approved under Rule 12.1(d) if the Commission finds it to be (1) reasonable in light of the whole record, (2) consistent with the law, and (3) in the public interest. Evaluation of those criteria precedes approval and adoption by the Commission.¹⁴

We find that the agreement by the Requesting Parties to seek authorization for PG&E to establish the GAMI Memorandum Account with a March 14, 2024 effective date is “reasonable in light of the whole record, consistent with law, and in the public interest.”¹⁵

**4.2.1. Establishing the Requested GAMIMA
Effective March 14, 2024, is Reasonable In
Light of the Proceeding Record**

The proceeding record to date shows that granting the Requesting Parties proposal to establish a GAMIMA effective prior to the final decision in this proceeding is reasonable in light of the extended proceeding schedule.

The proceeding record indicates first that PG&E filed its Application on March 14, 2024, after it began taking action to replace failing Gas Modules. It has and will continue to incur associated incremental costs relevant to this proceeding that must be recorded.

Second, the record shows that in our TY 2023 GRC decision, D.23-11-069, the Commission adopted a forecast of \$0 for Gas Module replacement. Even if it ultimately presents sufficient evidence through this proceeding, PG&E cannot collect from its customers to cover its GAMI Replacement Program costs until we

¹⁴ See D.12-10-019, Order Denying Rehearing of D.08-08-030 (October 11, 2012) at 14-15; D.09-11-008, Decision Denying Motion to Adopt Contested Settlement and Dismissing Application (November 20, 2009) at 6.

¹⁵ Rules of Practice and Procedure, Rule 12.1(d).

issue a decision regarding its request for a revenue requirement. This process creates uncertainty while this proceeding remains pending.

Third, the Scoping Memo and Ruling shows that the Commission adopted an extended proceeding schedule to develop a complete evidentiary record and take the matter under submission. We will likely require additional time to give full and fair consideration of the record evidence and issue a final decision on PG&E's requested revenue requirement. Under the extended proceeding schedule, the Commission's decision will likely be issued substantially after the March 14, 2024 effective date the Requesting Parties jointly propose.

The Commission attempts to avoid or at least minimize regulatory lag and the financial consequences that delays in deciding ratemaking proceedings can have upon utilities and ratepayers. However, where circumstances warrant, it is reasonable and appropriate for the assigned Commissioner and the Presiding Officer to pursue an extended procedural schedule requested by the parties. This is especially so where experienced parties and counsel may benefit from an extended schedule to settle initially disputed issues.

Here, the proceeding record establishes that all parties to the proceeding sought the extended proceeding schedule to allow their meaningful participation in this proceeding (*e.g.*, engage in discovery, prepare their respective cases, and engage in settlement discussions to resolve material issues in dispute). We affirm the assigned Commissioner's decision in the Scoping Memo and Ruling to provide all parties to this proceeding with additional time for those activities. The Commission will afford adequate time and process to ensure that ratepayer and utility interests are fairly represented in all proceedings. We expect each party to provide important analysis in cases that may have ratepayer impacts. If

we did not provide adequate time for all parties to participate in a meaningful way, we would risk undermining the quality of the proceeding.

We are also cognizant that structuring this proceeding to reach a final decision efficiently is reasonable because time is a valuable resource for the Commission and parties alike. However, because PG&E is incurring expenses for its AMI replacement program with a \$0 revenue requirement for the program, if our eventual final decision authorizes a revenue requirement allowing collection prospectively from the decision issuance, an extended proceeding schedule could lead to exacerbated rate changes for affected PG&E customers and adverse financial consequences for PG&E. Moreover, in such a situation, other parties may be incentivized to promote delays for a variety of reasons. Neither occurrence strikes us as desirable or reasonable.

Therefore, the proceeding record reveals a need for a mechanism to prevent or mitigate the effects of the extended proceeding schedule by situating all parties to the proceeding as relatively indifferent to the future date that the final decision is delivered; reduces incentives for any party to achieve gains through delay in the date of the final decision; and allows sufficient time, for all parties, as well as the Commission, to review and critically assess the record.

Consistent with similar stages in PG&E's two prior GRCs, it is reasonable to grant the Requesting Parties' unopposed request to authorize establishment of a memorandum account effective prior to the final decision in this proceeding to record the costs of the GAMI Replacement Program. For reasons discussed below, a March 14, 2024 effective date is consistent with the record and legal principles. Doing so will allow all parties, including PG&E and ratepayers, to be financially indifferent to the timing of the final decision during this proceeding's pendency.

Accordingly, it is reasonable to grant the Requesting Parties proposal to establish a GAMIMA effective March 14, 2024 in light of the current proceeding record.

4.2.2. Establishing the Requested GAMIMA with a March 14, 2024 Effective Date Is Consistent with Law

Although there exists a strong public policy favoring settlement “this policy does not excuse a contractual clause that is otherwise illegal or unjust.”¹⁶ Here, review of the Motion and Requesting Parties’ proposal reveals no such concerns. Moreover, no party to this proceeding identified any request in the collective Motion and Requesting Parties’ proposal that violates or is inconsistent with any law, rule, order, or decision of the Commission.

In D.23-11-069, the Commission allowed PG&E to file the instant Application.¹⁷ However, we did not authorize the continued use of PG&E’s ongoing GRC memorandum accounts for a new -- non-GRC -- proceeding. The Commission also declined in D.23-11-069 to authorize a new memorandum account prior to the actual filing of this Application.¹⁸ Now that PG&E has filed

¹⁶ *Rheinhardt v. Nissan N. Am., Inc.*, 92 Cal.App.5th at 1028 (citing *Timney v. Lin*, 106 Cal.App.4th 1121, 1127 (Cal. Ct. App. 2003), 131 Cal.Rptr.2d 387) (“[O]ur Supreme Court and other California courts have rejected the notion that a settlement judge may properly act to ‘approve’ an illegal contract and thereby shield it from invalidation. [Citations.]”). See also *Vitatech Internat., Inc. v. Sporn*, 16 Cal.App.5th 796, 807 (Cal. Ct. App. 2017) (“[A] court cannot validly enter a judgment or order which is void even if the parties agree to it.”).

¹⁷ D.23-11-069 at 545.

¹⁸ D.23-11-069 at 545 (“PG&E may file a separate application seeking recovery of cost for replacement of AMI modules, but no revenue requirement is authorized in this proceeding due to [1] the unsubstantiated nature of the forecast and [2] PG&E’s failure to propose a reasonable allocation of costs for replacement between ratepayers and shareholders that fairly reflects PG&E’s errors in its AMI module business plan. *No memorandum account is authorized here.*”) (emphasis added).

A.24-03-011, establishment of a GAMIMA with a March 14, 2024 effective date in this proceeding is appropriate and consistent with law for the reasons below.

4.2.2.1. The Retroactive Ratemaking Prohibition

As TURN and Cal Advocates argued and PG&E acknowledges, the Commission recognizes the longstanding rule against “retroactive ratemaking.” However, as discussed below, establishing a GAMIMA with a March 14, 2024 effective date does not violate that prohibition.

Public utility law recognizes a fundamental rule against retroactive ratemaking that prohibits a public utility commission from adjusting a utility’s current rates to make up for that utility’s previous over- or undercollection from ratepayers.¹⁹ Under this general rule, a public utility commission would not authorize increased utility rates to account for previously-incurred expenses.²⁰

The California Supreme Court recognized in *Southern Cal. Gas Co. v. Public Utilities Commission* that general utility ratemaking is delegated by statute to the Commission and performed on a prospective basis.²¹ In *Southern California Edison*

¹⁹ See *Cogentrix Energy Power Mgmt. v. Fed. Energy Regulatory Comm’n*, 24 F.4th 677, 681 (D.C. Cir. 2022) (“[T]he rule against retroactive ratemaking, . . . prohibits [a public utilities] Commission from adjusting current rates to make up for a utility’s over- or undercollection in prior periods.”).

²⁰ See *Southern Cal. Edison Co. v. Public Utilities Com.*, 20 Cal.3d 813, 836 (Cal. 1978) (Clark, J., dissenting) (“The rule against retroactive ratemaking serves to encourage efficiency because the utility will strive to hold down costs so as to increase profits under the established rate. Permitting retroactive ratemaking would shift the risk of error in estimating costs and revenues from the utility to the consumer, reducing the utilities’ incentive for efficiency.”).

²¹ *Southern Cal. Gas Co. v. Public Utilities Commission*, 23 Cal.3d 470, 480-81 (Cal. 1979) (“The setting of utility rates and rates of return is a legislative act, delegated by the Legislature to the Public Utilities Commission. (*Pacific Tel. Tel. Co. v. Public Util. Com.* (1965) 62 Cal.2d 634, 647) As with any legislative act, the commission’s findings and conclusions on matters of fact are final and its decisions are presumed to be valid. Review by this court is limited to determining whether the commission’s decisions are supported by the evidence and whether the utility has been afforded due process. (*American Toll Bridge Co. v. Railroad Com.* (1938) 12 Cal.2d 184, 190-193; *Pacific Tel. Tel.*, *supra*, 62 Cal.2d at 646-647; Pub. Util. Code, § 1757”).

Co. v. Public Utility Commission, that court reaffirmed "the rule that general rate making is legislative in character and looks to the future."²² In *Southern Cal. Edison Co. v. Public Util. Comm'n*, the California Court of Appeals stressed that memorandum accounts "are designed to record expenses that the Commission subsequently reviews for possible inclusion in rates."²³

To avoid retroactive ratemaking issues, the Commission has authorized utilities to record expenses prospectively, in a specific memorandum account that is made effective on a justifiable date certain. Those record expenses are then subsequently reviewed for possible inclusion in rates. It is well-established that this practice does not violate the rule against retroactive ratemaking.²⁴ As we stated in D.99-11-057:

Memorandum accounts were designed to allow utilities the opportunity to record costs incurred prior to the Commission's review of the costs for reasonableness. In order to carry out its ratemaking duties fairly and orderly, the Commission has decided to parallel the prohibition against retroactive ratemaking by requiring that the establishment of a memorandum account not be retroactive. That is, the memorandum account can start to record debits or credits only prospectively from the date the account is authorized. In that way, if recorded costs are subsequently approved for recovery in rates,

²² *Southern California Edison Co. v. Public Utility Commission*, 20 Cal.3d 813, 816-817 (Cal. 1978) (reiterating same language in *Pacific Tel. & Tel. Co. v. Public Util. Com.*, 62 Cal.2d 634, 655 (Cal. 1965) and *City of Los Angeles v. Public Utilities Commission*, 7 Cal.3d 331, 338 (Cal. 1972)).

²³ *Southern Cal. Edison Co. v. Public Util. Comm'n*, 85 Cal. App 4th 1086, 1092 (Cal. Ct. App. 2000) (emphasis added).

²⁴ See *Pacific Gas and Electric Co.*, D.02-07-032; (July 17, 2002), 2002 Cal. PUC LEXIS 441 (stating, "Generally, it would be retroactive ratemaking to compensate utilities for costs incurred above the revenue requirement, unless a specific memorandum account is set up for that purpose. The Commission has specifically allowed certain memorandum accounts to mitigate the risks for certain costs that are beyond the utilities control.") (emphasis added).

*there will be no confusion or entanglement of issues regarding retroactive ratemaking.*²⁵

As demonstrated below, the Requesting Parties proposal of a March 14, 2024 effective date is legally justifiable as the filing date of the Application seeking review and possible recovery through rates. Therefore, in light of the authorities above, we find that establishing a GAMIMA to record expenses prospectively, with a March 14, 2024 effective date, for later review does not constitute retroactive ratemaking.

4.2.2.2. March 14, 2024 GAMIMA Effective Date

We next examine whether the Requesting Parties' proposed March 14, 2024 effective date is consistent with law. The Requesting Parties' statements and authorities presented in their respective filings in this proceeding support adoption of that effective date.

Prior to the Requesting Parties' agreement, PG&E offered in its Motion that the March 14, 2024 Application filing date would be an appropriate effective date for a memorandum account to record costs in this proceeding. PG&E argued that the Commission issued decisions constituting "precedent supporting a March 14, 2024 effective date" and that "[a]pproving a March 14, 2024 effective date—at the latest—is consistent with Commission policy and precedent."²⁶

TURN did not present a legal basis precluding a March 14, 2024 effective date. Instead, TURN's opposition to the Motion argued that the Commission should not establish a GAMIMA effective date *earlier* than the March 14, 2024

²⁵ *In Re Southern California Edison Co.*, D.99-11-057, (November 18, 1999), 1999 Cal. PUC LEXIS 769 (emphasis added).

²⁶ Motion at 5 n.8 (citing D.18-06-029 at 15 ("we approve the recording of costs incurred as of the date PG&E filed its application"); D.23-04-007 at 21 (approving the application filing date as the effective date of proposed memorandum account)).

filing date of the Application.²⁷ TURN conceded that “[t]he Commission has in some instances made the effective date as early as *the date on which the underlying application was filed*, rather than the later date of the decision authorizing the memorandum account.”²⁸ TURN also noted that PG&E’s Motion cited D.23-04-007, where we stated, “Establishing a memorandum account *prior to the date of the filing of an application* is retroactive ratemaking.”²⁹ Cal Advocates initially opposed creation of the GAMIMA but offered that “There is no legal basis for the Commission to adopt the [G]AMIMAs with an effective date that *precedes* PG&E’s Gas AMI Application.”³⁰

We are persuaded by the initial arguments and authorities presented by PG&E and TURN that establishing a GAMIMA effective as of the March 14, 2024 Application filing date is consistent with law. Also compelling is the fact that Cal Advocates abandoned its opposition to join the Requesting Parties proposal of the March 14, 2024 effective date. In addition, SBUA and SCE do not contest that effective date. Therefore, authorizing establishment of a GAMIMA with a March 14, 2024 effective date is consistent with law.

²⁷ TURN Opposition at 8.

²⁸ TURN Opposition at 8 (emphasis added).

²⁹ TURN Opposition at 8 n.18 (quoting D.23-04-007 at 17 and 20) (emphasis added).

³⁰ Cal Advocates Opposition at 4 and n.21 (emphasis added) (citing D.23-05-003 and D.88-09-020 in support of establishing effective date of memorandum account as the date of the decision on the application).

4.2.3. Establishing the Requested GAMIMA with a March 14, 2024 Effective Date is in the Public Interest

The California Supreme Court advised that the public interest is evaluated in light of the circumstances of each case and the proposed settlement terms.³¹ Here, the circumstances of this proceeding make authorizing a GAMIMA with a March 14, 2024 effective date in the public interest.

The Requesting Parties unopposed proposal settles their dispute regarding establishment of a GAMIMA and an effective date so that the Commission may consider and grant PG&E's Motion on uncontested terms. This reasonably resolves all disputes raised in opposition to PG&E's Motion, provides an efficient resolution to otherwise highly contested issues, avoids further consumption of party and Commission time and resources, and aligns with the strong public policy favoring settlement of disputes.

Moreover, approving the Requesting Parties' proposed GAMIMA advances our previously stated objectives that protect the public interest: promoting full and meaningful participation of all parties; holding both utility

³¹ In *Santa Barbara v. Superior Court*, 41 Cal.4th 747, 755-56 (Cal. 2007), the California Supreme Court addressed the "factors or characteristics" that underlie the concept of "public interest" in the context of an agreement releasing liability as follows:

In passages widely quoted and followed or adopted as a guide by numerous out-of-state decisions addressing the enforceability of such agreements, we wrote "The social forces that have led to such characterization are volatile and dynamic. *No definition of the concept of public interest can be contained within the four corners of a formula.* The concept, always the subject of great debate, has ranged over the whole course of the common law; *rather than attempt to prescribe its nature, we can only designate the situations in which it has been applied. We can determine whether the instant contract does or does not manifest the characteristics which have been held to stamp a contract as one affected with a public interest.*"

(citing *Tunkl v. Regents of University of California*, 60 Cal.2d 92, 98 (Cal. 1963) (emphasis added)).

shareholders and ratepayers harmless for any required procedural delays in this proceeding; removing incentives for any party to seek or promote delay; and providing parties and Commission decisionmakers with sufficient time to review and analyze the record.

We stress that approving establishment of the GAMIMA does not affect the public's interest in the Commission's process or standard of proof. PG&E bears the burden of proof in this proceeding. Approving establishment of the GAMIMA does not provide recovery of any costs recorded in that account. All parties will have their opportunity to litigate the merits of the Application.

Upon issuance of a decision on the activities and costs proposed in PG&E's Application, costs recorded in the GAMIMA must be reviewed to determine whether the costs of activities recorded in the memorandum account are reasonable and consistent with the terms of the Commission's final decision. The Commission will address the disposition of the memorandum account balances when we issue our decision on PG&E's revenue requirement request.

Therefore, granting the Requesting Parties proposal to establish this memorandum account does not predetermine whether, how, and to what extent PG&E may recover the costs tracked therein. Rather, it merely preserves PG&E's ability to request Commission consideration of the recoverability of its GAMI Replacement Program costs, without objection that might otherwise be asserted based on the retroactive ratemaking doctrine.

Although there are issues to resolve regarding the GAMI Replacement Program activities and costs, PG&E is taking these actions without any guarantee the Commission will approve recovery of any costs from ratepayers. PG&E presents a situation where it expects to incur incremental costs prior to a final Commission decision on the merits of the Application. Therefore, while PG&E is

incurring these costs, it is appropriate and in the public interest that it track them in a GAMIMA effective on the March 14, 2024 filing date of the Application.

Accordingly, the Commission finds it in the public interest to authorize establishment of the proposed GAMIMA, effective March 14, 2024.

4.3. Interest

Finally, PG&E's Motion requested that the Commission issue an order that any adopted revenue requirements include interest, based on a Federal Reserve three-month commercial paper rate. No party to the proceeding opposed that request. As in PG&E's TY 2023 GRC and TY 2020 GRC, we find PG&E's request reasonable and therefore grant it.

5. Summary of Public Comment

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the "Public Comment" tab of the online Docket Card for that proceeding on the Commission's website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding.

Approximately 30 public comments were submitted using the Public Comment tab of the online Docket Card for this proceeding on the Commission's website. The comments to date express opposition to an increase in PG&E's rates and appear relevant to a final decision to be issued in this proceeding. The present decision does not address a rate increase.

6. Conclusion

Consistent with the unopposed joint proposal of the Requesting Parties, the Commission grants PG&E's unopposed Motion to establish a GAMIMA to track and record PG&E's actual revenue requirements for its GAMI Replacement Program, effective March 14, 2024. Any adopted revenue requirements for the

GAMI Replacement Program shall include interest, based on a Federal Reserve three-month commercial paper rate.

7. Waiver of Comment Period

As explained above, Cal Advocates and TURN withdrew their opposition to PG&E's Motion and, with PG&E, jointly proposed the relief granted in this decision. SBUA and SCE did not oppose the Motion or joint proposal of the Requesting Parties. PG&E's Motion and Requesting Parties' agreed proposal is therefore unopposed by any party to this proceeding to the extent granted in this decision.

Under Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the Commission may reduce or waive the period for public review and comment in an uncontested matter where the decision grants the relief requested. We therefore waive the period for public review and comment pursuant to this rule.

8. Assignment of Proceeding

Matthew Baker is the assigned Commissioner and Jeffrey Lee is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. On March 14, 2024, PG&E filed A.24-03-011 seeking to recover year 2023-2026 revenue requirements for its GAMI Replacement Program.
2. PG&E will incur incremental costs for its GAMI Replacement Program prior to a final Commission decision on the merits of the Application.
3. On April 5, 2024, PG&E filed a Motion to establish memorandum accounts effective January 1, 2023, to track costs related to its GAMI Replacement Program, including interest, based on a Federal Reserve three-month commercial paper rate.

4. PG&E, TURN, and Cal Advocates jointly propose an unopposed resolution to the Motion, requesting that the Commission authorize PG&E to establish a GAMIMA with a March 14, 2024 effective date.

5. Granting approval to establish a GAMIMA does not guarantee recovery of any costs recorded in that memorandum account.

6. Costs recorded in a GAMIMA will be reviewed at a later stage of the proceeding.

7. Approval of a GAMIMA preserves PG&E's ability to request further Commission consideration of the recoverability of costs for its GAMI Replacement Program.

8. No party to this proceeding opposed PG&E's Motion request that any adopted revenue requirements in this proceeding include interest, based on a Federal Reserve three-month commercial paper rate.

Conclusions of Law

1. PG&E's Motion should be granted.
2. Approval of a GAMIMA effective March 14, 2024, is reasonable in light of the whole record.
3. Approval of a GAMIMA effective March 14, 2024, is consistent with law.
4. Approval of a GAMIMA effective March 14, 2024, is in the public interest.
5. Establishing a GAMIMA should not provide an approval of the proposed costs.
6. PG&E's request that the Commission order that any adopted revenue requirements include interest, based on a Federal Reserve three-month commercial paper rate, is reasonable and should be granted.
7. The proceeding should remain open.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company is authorized to establish a Comprehensive Gas Advanced Metering Infrastructure Memorandum Account, effective March 14, 2024.

2. Pacific Gas and Electric Company must file its tariff implementing the Comprehensive Gas Advanced Metering Infrastructure Memorandum Account consistent with this decision via Tier 2 Advice Letter no later than 30 days from the date of this decision.

3. Pacific Gas and Electric Company shall provide upon request all information that the Commission Energy Division staff reasonably requires.

4. The specific criteria for rate recovery of costs recorded in the Comprehensive Gas Advanced Metering Infrastructure Memorandum Account will be addressed through the final decision of this proceeding.

5. Any adopted revenue requirement in this proceeding shall include accrued interest covering the period starting on March 14, 2024, based on the applicable three-month commercial paper rate published in the Federal Reserve Statistical Release H.15 or its successor, to the extent necessary to keep Pacific Gas and Electric Company, its ratepayers, shareholders, and other affected parties indifferent to the precise timing of the Commission's final decision in this proceeding.

6. Application 24-03-011 remains open.

This order is effective today.

Dated November __, 2024, at Bakersfield, California.